

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**MONICA REYES, individually and as
guardian and next friend of Jane Doe, a
minor,**

Plaintiff,

Case No. 2:19-cv-00601 GBW-KRS

vs.

**FRANK RAMOS ARIAS, and SILVER
CITY CONSOLIDATED SCHOOLS,**

Defendants.

**DEFENDANT SILVER CITY CONSOLIDATED SCHOOLS' ANSWER TO
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS, NEGLIGENCE AND
OUTRAGEOUS BEHAVIOR AND CONDUCT**

COMES NOW Defendant Silver City Consolidated Schools, by and through counsel, Jerry A. Walz, Walz and Associates, P.C., hereby answers Plaintiff's Complaint for Violation of Civil Rights, Negligence and Outrageous Behavior and Conduct as follows:

1. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny Paragraph 1 and therefore denies same.
2. Defendant Silver City Consolidated Schools admits Paragraph 2.
3. Defendant Silver City Consolidated Schools admits Paragraph 3.
4. Upon information and belief Defendant Silver City Consolidated Schools admits Paragraph 4.
5. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny Paragraph 5 and therefore denies same.

6. Upon information and belief Defendant Silver City Consolidated Schools admits Paragraph 6. Further, the Court record speaks for itself as to any criminal complaints or pleas as to Defendant Arias.

7. Defendant Silver City Consolidated Schools denies Paragraph 7.

8. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny Paragraph 8 and therefore denies same.

9. Paragraph 9 calls for a legal conclusion to which an answer is generally not required. To the extent any factual allegations are contained in Paragraph 9, Defendant Silver City Consolidated Schools denies such allegations.

**FIRST CAUSE OF ACTION
(Claims Against Defendants Pursuant to 42 U.S.C. § 1983)**

10. Defendant Silver City Consolidated Schools hereby incorporates its previous answers as if set out fully herein.

11. Paragraph 11 calls for a legal conclusion for which an answer is generally not required. To the extent any factual allegations are contained in Paragraph 11, Defendant Silver City Consolidated Schools denies such allegations.

12. The Court record speaks for itself as to any felonious act committed by Defendant Arias. Defendant Silver City Consolidated Schools is without information or belief to admit or deny the remaining allegations in Paragraph 12 and therefore denies same.

13. Paragraph 13 calls for a legal conclusion for which an answer is generally not required. To the extent any factual allegations are contained in Paragraph 13, Defendant Silver City Consolidated Schools denies such allegations.

14. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny Paragraph 14 and therefore denies same.

15. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny Paragraph 15 and therefore denies same.

16. Defendant Silver City Consolidated Schools denies Paragraph 16.

17. Paragraph 17 calls for a legal conclusion to which an answer is generally not required. To the extent any factual allegations are contained in Paragraph 17, Defendant Silver City Consolidated Schools denies such allegations.

18. Paragraph 18 calls for a legal conclusion to which an answer is generally not required. To the extent any factual allegations are contained in Paragraph 18, Defendant Silver City Consolidated Schools denies such allegations.

Defendant Silver City Consolidated Schools denied Plaintiff's Wherefore clause.

**SECOND CAUSE OF ACTION
(Liability of Defendants Pursuant to the New Mexico Tort Claims Act)**

19. Defendant Silver City Consolidated Schools hereby incorporates its previous answers as if set out fully herein.

20. Paragraph 20 calls for a legal conclusion for which an answer is generally not required. To the extent an answer is required, upon information and belief Defendant Silver City Consolidated Schools admits Paragraph 20.

21. Defendant Silver City Consolidated Schools admits Paragraph 21.

22. Defendant Silver City Consolidated Schools denies Paragraph 22.

23. Defendant Silver City Consolidated Schools denies Paragraph 23.

24. Defendant Silver City Consolidated Schools denies Paragraph 24.

25. Defendant Silver City Consolidated Schools denies Paragraph 25.

26. Defendant Silver City Consolidated Schools denies Paragraph 26.

Defendant Silver City Consolidated Schools denies Plaintiff's Wherefore clause.

THIRD CAUSE OF ACTION
(Claims Against Defendant Arias for Outrageous Behavior and Conduct)

27. Defendant Silver City Consolidated Schools hereby incorporates its previous answers as if set out fully herein.

28. Paragraph 28 does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny any allegations in Paragraph 28 and therefore denies same.

29. Paragraph 29 does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny any allegations in Paragraph 29 and therefore denies same.

30. Paragraph 30 does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny any allegations in Paragraph 30 and therefore denies same.

31. Paragraph 31 does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny any allegations in Paragraph 31 and therefore denies same.

32. Paragraph 32 does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny any allegations in Paragraph 32 and therefore denies same.

33. Paragraph 33 does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient information or belief to admit or deny any allegations in Paragraph 33 and therefore denies same.

Plaintiff's Wherefore clause does not contain allegations against Defendant Silver City Consolidated Schools. Defendant Silver City Consolidated Schools is without sufficient

information or belief to admit or deny any allegations in Plaintiff's Wherefore Clause and therefore denies same.

Further, any fact not specifically admitted or denied that has not been addressed in Plaintiff's Complaint is denied.

AFFIRMATIVE DEFENSES

COMES NOW Defendant Silver City Consolidated Schools and hereby asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to set forth in whole or part claims that are actionable.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's State claims are barred in whole or part pursuant to the New Mexico Tort Claims Act.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims for punitive damages are barred in whole or part.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for constitutional damages are barred as a matter of law as Silver City Consolidated Schools did not violate Plaintiff's civil rights.

FIFTH AFFIRMATIVE DEFENSE

The negligence of all parties, named or unnamed in the lawsuit, including that of Plaintiff, should be compared and contrasted, and any award, if one is given, should be based upon comparative fault.

SIXTH AFFIRMATIVE DEFENSE

Any damages suffered as claimed by Plaintiff, which are specifically denied, were caused by separate and independent actions of others for which this Defendant is not liable.

SEVENTH AFFIRMATIVE DEFENSE

Personal jurisdiction has not been established or properly set forth and Plaintiff's complaint should be dismissed.

WHEREFORE, Defendant Silver City Consolidated Schools has answered Plaintiffs' Complaint in full, asserted its affirmative defenses, and respectfully requests dismissal of Plaintiff's claims against it with prejudice, and to receive an award of attorney fees and costs and for such other and further relief as the Court deems just and proper and as allowed by law.

Respectfully Submitted,

WALZ AND ASSOCIATES, P.C.

/s/ Jerry A. Walz
Jerry A. Walz, Esq.
*Attorney for Silver City Consolidated
Schools*
133 Eubank Blvd NE
Albuquerque, NM 87123
(505) 275-1800
jerryawalz@walzandassociates.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served on all counsel of record via CM/ECF this 30th day of June, 2019.

/s/ Jerry A. Walz
Jerry A. Walz, Esq.